

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
Scott and Jana Kittredge)
Kittredge Ranch II)
APL-002-04) **Decision**

This Decision is in response to an appeal (APL-002-04) of a National Organic Program denial of certification to Kittredge Ranch II proposed by Oregon Tilth Certified Organic (OTCO), for alleged noncompliance with the Organic Foods Production Act of 1990 (Act)¹ and the regulations promulgated thereunder.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, and handling operations to the National Organic Standards (7 CFR Part 205). Certifying agents also initiate compliance actions to enforce program requirements. Denial of certification procedures are set forth in Section 205.405 of the NOP regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator pursuant to Section 205.680 of the NOP regulations.

FINDINGS OF FACT

- 1) Oregon Tilth Certified Organic received USDA accreditation on April 29, 2002.
- 2) In February 2002, Scott and Jana Kittredge ordered treated oat seed. This seed, treated with fungicide RTU/Vitavax/Thiram, was planted on June 26, 2002. By

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

way of exclusion from the National List of Allowed and Prohibited Substances the fungicide on the seeds is a prohibited substance.³

- 3) Kittredge Ranch II applied for organic certification of 160 acres, Parks Place Field, on February 20, 2004. Alfalfa and oats, as a cover crop, were planted in this field in 2003.
- 4) An OTCO Farm Inspector conducted an inspection at Kittredge Ranch II on April 20, 2004. The Inspector noted, “Oat Seed type used on 6-26-2002 was non-organic source and treated with a fungicide. Grower was aware of the OTCO Standards from the year before, where treated seed use was not a prohibited material use. They did not get the updated NOP/OTCO Standards printed 10-21-2001 stating the prohibited nature of seed treatments such as was used and planted in 2002.”
- 5) On May 20, 2004, OTCO issued a certification decision, granting the Kittredge Ranch II Parks Place Field transitional, but not organic certification. The decision letter states that Parks Place Field will be eligible for organic status on 6-27-05, due to use of seed treated with prohibited substance on 6-26-02.
- 6) Scott and Jana Kittredge wrote a letter, dated June 21, 2004, asking the OTCO Application Review Committee to reconsider their decision in order to allow the alfalfa crop growing in Parks Place Field to be certified organic.
- 7) OTCO considered the June 21, 2004, letter to be a request for mediation. This was denied on July 12, 2004 and the right to appeal to the AMS Administrator extended to the applicants.

³ §205.600 - §205.606

- 8) An appeal from Scott and Jana Kittredge was accepted for review on August 19, 2004.

DISCUSSION

Scott and Jana Kittredge request that an exception be granted to reverse the May 2004 decision by OTCO to deny organic certification. This would allow the alfalfa crop, planted in 2003 and harvested in 2004, to be certified organic. Oat seed treated with a prohibited substance was planted in Parks Place Field in June 2002 as verified during the inspection and in subsequent correspondence from the appellants. Per the National Organic Program, "The seed carries a prohibited substance that comes in contact with the soil." Therefore, in compliance with 205.202(b), a crop harvested from the Parks Place Field is not eligible for organic certification until June 26, 2005.

Scott and Jana Kittredge have appealed on the basis of: 1) receiving erroneous information from the certifying agent in 2002 as to whether the use of treated seed would present a problem for future organic certification; 2) ordering and planting the seed prior to the enactment of NOP regulations when the use of treated seed use was not a prohibited material use under the OTCO standards at that time; and 3) the minimal quantity and quick breakdown of RTU-Vitavax-Thiram contained in and on the seeds.

Misinformation from a certifying agent and being unaware of changes in requirements do not constitute grounds to waive compliance with the NOP regulations. In addition, the required three year period in which land must be free of prohibited substances restricts the application not the residual activity of the substance.

CONCLUSIONS

The decision of OTCO to deny organic certification to the 160 acre Parks Place Field at Kittredge Ranch II on May 20, 2004, on the basis of noncompliance with 205.202(b) stands. The alfalfa crop harvested in 2004 is not eligible for organic certification as it was grown in soil to which a prohibited substance had been applied within three years. Pending compliance with all provisions of 7 C.F.R Part 205, the crop harvested from Parks Place Field after June 26, 2005, is eligible for organic certification.

DECISION

The appeal is denied.

Done at Washington, D.C.

/s/

Kenneth C. Clayton
Acting Administrator